86-341

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

FORT HALIFAX PACKING COMPANY, INC.

Appellant

—v.—

MARVIN W. EWING, Director Bureau of Labor Standards, Department of Labor

Appellee

and

FORT HALIFAX PACKING COMPANY, INC.

Appellant

—v.—

RAYMOND BOURGOIN, *et al.*

Appellees

ON APPEAL FROM THE MAINE SUPREME JUDICIAL COURT

APPENDIX TO JURISDICTIONAL STATEMENT

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APPENDIX A

June 2, 1986—Opinion of the Maine Supreme Judicial Court

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. 4142
Law Docket No. Ken-85-216

DIRECTOR OF BUREAU OF LABOR STANDARDS, *et al.*

—v.—

FORT HALIFAX PACKING COMPANY

FORT HALIFAX PACKING COMPANY

Argued November 15, 1985
Decided June 2, 1986

Before McKUSICK, C.J., NICHOLS, ROBERTS, GLASSMAN, and SCOLNIK, JJ.

ROBERTS, J.

Fort Halifax Packing Company (hereafter Halifax) appeals from a judgment rendered in the Superior Court, Kennebec County, granting severance pay in varying amounts to over 80 of its employees pursuant to 26 M.R.S.A. § 625-B (Pamph. 1985).[1]

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[1]26 M.R.S.A. § 625-B (Pamph. 1985) provides in part:

> 2. Severance pay. Any employer who relocates or terminates a covered establishment shall be liable to his employees for severance pay at the rate of one week's pay for each year of employment by the employee in that establishment. The severance pay

(Footnote continued on following page)

On appeal Halifax claims that the Maine severance pay statute is preempted by both the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.* (1985) (hereafter ERISA) and the National Labor Relations Act, 29 U.S.C. §§ 157 and 158 (1985) (hereafter NLRA). Halifax also raises issues concerning the constitutionality of the severance pay statute, the propriety of the trial justice's denial of a jury trial, the appropriateness of several findings of fact and the necessity of arbitration. Although we modify the trial justice's calculation of severance pay owing to ten employees, we affirm the judgment of the Superior Court in all other respects.

I. *Facts & Procedural Background*

Halifax began packaging and processing poultry in Winslow in 1972 when it purchased the assets of Ralston Purina, a corporation that had conducted similar operations on the site since 1961. On May 23, 1981 Halifax ceased processing operations at the Winslow plant and laid off all of its workforce except several maintenance men and clerical employees.

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to eligible employees shall be in addition to any final wage payment to the employee and shall be paid within one regular pay period after the employee's last full day of work, notwithstanding any other provisions of law.

3. Mitigation of severance pay liability. There shall be no liability for severance pay to an eligible employee if:

A. Relocation or termination of a covered establishment is necessitated by a physical calamity;

B. The employee is covered by an express contract providing for severance pay;

C. That employee accepts employment at the new location; or

D. That employee has been employed by the employer for less than 3 years.

At the time of the closing, Halifax had over 100 individuals on the payroll. These employees worked (1) directly in the processing plant, (2) on "live-haul" duty,[2] (3) as supervisory or administrative employees, or (4) in one of the Corbett Brothers feed mills.[3] Many of the employees who worked directly in the plant were represented by Local 385 of the Amalgamated Meat Cutters & Butcher Workmen of North America (hereafter Local 385) and had a contract with Fort Halifax. This contract had effective dates from June 2, 1979 to June 2, 1982 and contained no provision for severance pay. In fact, at the time of the closing Halifax had no contract or agreement regarding severance pay that governed any of the employees delineated above.

Following the closing, Halifax met with officials of the State of Maine and union representatives to discuss the possibility of reopening the plant. Specifically in the fall of 1981 Halifax suggested that reopening was possible and sought concessions from Local 385 in the form of amendments to the union contract. The amendments, *inter alia,* sought to add a severance pay provision to the contract that would shield Halifax from severance pay liability for union members under 26 M.R.S.A. § 625-B in the event that the plant reopened. Although Local 385 signed the agreement on November 1, 1981, Halifax never resumed operations before the expiration date of the proposed amendments, June 2, 1984.

Prior to the signing of the amendments, on October 30, 1981

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[2]"Live-haul" duty employees were used by Halifax to travel to various farms to catch, crate and transport poultry grown by independent farmers for sale to Halifax.

[3]Corbett Brothers is a subsidiary of Halifax that produced table and hatching eggs as well as broilers. Halifax used this subsidiary, *inter alia,* to raise the poultry necessary for processing.

eleven employees of the plant filed suit against Halifax in Superior Court seeking severance pay pursuant to 26 M.R.S.A. § 625-B. A few days later the Director of the Bureau of Labor Standards also commenced an action to enforce the provisions of Maine's severance pay law as to all Halifax employees pursuant to 26 M.R.S.A. § 625-B(5).[4] At a trial held in the Superior Court without a jury, the trial justice found that Halifax was liable for severance pay and provided a precise computation of the amounts owing to eligible individuals.

II. *ERISA Preemption*

As its first contention on appeal, Halifax in conjunction with amici,[5] argues that it is not liable for severance pay under 26 M.R.S.A. § 625-B because that statute is preempted by ERISA. For the reasons set forth below, we disagree. It is through operation of the supremacy clause of the United States Constitution that federal law preempts conflicting state law. *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1, 210-211 (1824). A conflict warranting preemption may be direct in that the state regulation obviously contradicts federal regulations, or it

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[4]26 M.R.S.A. § 625-B(5) provides in part:

> 5. Suits by the director. The director is authorized to supervise the payment of the unpaid severance pay owing to any employee under this section. The director may bring an action in any court of competent jurisdiction to recover the amount of any unpaid severance pay. The right provided by subsection 4 to bring an action by or on behalf of any employee, and of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the director in an action under this subsection, unless the action is dismissed without prejudice by the director. . . .

[5]The Chamber of Commerce of the United States and the Maine Chamber of Commerce and Industry filed an amicus brief pursuant to M.R. Civ. P. 75A(f)(1) in support of Halifax's preemption arguments.

may arise from congressional intent, either express or implied, to occupy a particular area. *McDermott* v. *State of Wisconsin*, 228 U.S. 115, 132-134 (1913); *Metropolitan Life Ins. Co.* v. *Massachusetts*, 105 S.Ct. 2380, 2393 (1985) (citing *Malone* v. *White Motor Corp.*, 435 U.S. 497, 504 (1978)). Preemption, however, is not a favored concept, and federal regulation will be deemed to be preemptive of state regulatory powers only if grounded in "persuasive reasons—either the nature of the regulated subject matter permits no other conclusion or that Congress has unmistakably 'so ordained.'" *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 522 (1981) (quoting *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142 (1963)).

As the preamble to the Act indicates, ERISA was enacted in 1974 for the purpose of regulating private employee benefit plans established and maintained by employers and employee organizations. 29 U.S.C. § 1001(a) (1985). *See also* Hutchinson & Ifshin, *Federal Preemption of State Law Under the Employee Retirement Income Security Act of 1974*, 46 U. Chi. L. Rev. 23 (1978). Prior to ERISA's passage regulation of privately created employee benefit plans was generally confined to state laws that were not uniquely adapted to protect the participants of such plans. Hutchinson, 46 U. Chi. L. Rev. at 25. Growth in size of employee benefit plans and a concomitant increase in loss of benefits by employees compelled Congress to establish uniform disclosure, reporting, vesting and funding standards meant to ensure that employees would not lose benefits in plans created by employers or employee organizations. *See generally* H.R. Rep. No. 533, 93d Cong., 2d Sess. (1973). Essentially, ERISA is concerned with regulating two types of privately created employee benefit plans—pension plans that provide for retirement or deferred income (29 U.S.C. § 1002(2)) and welfare benefit plans that provide for medical, sickness, accident and other non-pension fringe

benefits (29 U.S.C. § 1002(1)).[6] The Act specifically states that its requirements are meant to cover those plans created by employers and employee organizations. 29 U.S.C. § 1003(a).[7]

With an eye towards making regulations of private employee benefit plans exclusively a federal concern, ERISA also contains an express preemption provision which provides:

> Except as provided in subsection (6) of this section, the provisions of this title and title IV shall supersede any

[6]Part one of ERISA covers the reporting and disclosure requirements for both types of plans. The basic purpose of these requirements is to keep employees informed of their rights and to enable the Secretary of Labor to assess the financial soundness of plans. Consequently, under Part one fund administrators must furnish plan participants with a description of the plan and provide a copy of the annual report. Such information must also be supplied to the Secretary of Labor.

Parts two and three of ERISA address pension benefit plans only. These sections establish minimum vesting, participation and funding requirements.

Part four applies to both types of plans and sets the fiduciary standards for plan management. A "prudent man" standard is established for fund administrators and a list of prohibited financial transactions is given.

Part five of ERISA contains the enforcement provisions of the Act. It creates broad criminal and civil penalties and gives the Secretary of Labor investigative powers and authority to promulgate regulations.

[7]Title 29 U.S.C. ¶ 1003(a) provides in part:

> (a) . . . [T]his subchapter shall apply to any employee benefit plan if it is established or maintained—
>
> (1) by any employer engaged in commerce or in any industry or activity affecting commerce; or
>
> (2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or
>
> (3) by both.

> and all state laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title. . . .

29 U.S.C. § 1144. Thus, in this case we must address the question of whether in light of the ERISA's purposes and the existence of an express preemption provision Congress has "unmistakably . . . ordained" preemption of Maine's severance pay law.

In *Shaw* v. *Delta Airlines*, 463 U.S. 85 (1983), the Supreme Court gave a rather broad construction to the "relate to" language in ERISA's preemption provision. In *Shaw* the Court held that the Section 1144 not only preempts state laws dealing with the subject matters covered by ERISA, e.g. reporting, disclosure, and fiduciary responsibility, but also those state laws that have "a connection with or reference to" employee benefits plans covered by the statute. *Id.* at 97, 98. Inasmuch as Maine's severance pay law does not attempt to regulate the reporting, disclosure, and fiduciary subjects covered by ERISA, our statute will be preempted only if it can be said to have "a connection with or reference to" employee benefit plans that are within ERISA's coverage.

Our inquiry in this regard is made simple by the fact that the Maine severance pay statute does not affect employee benefit plans that are within ERISA's regulatory reach. Title 29 U.S.C. §§ 1003(a) and 1002(1) make it clear that the employee benefit plans intended for coverage under ERISA are those created by employers or employee organizations. Thus, the preemptive effect of section 1144 is on those State laws that affect plans created by either of these private parties.[8]

[8]Consequently, those state laws that have been held by the Supreme Court to be preempted implicate plans that have been created by em-

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In this case the severance pay liability created by Section 625-B is not a plan created by an employer or employee organization. Instead, it is a state created fringe benefit passed within the police power for the purpose of dealing with the economic dislocation that accompanies the shut-down of large establishments. Inasmuch as Section 625-B does not implicate a plan created by an employer or employee organization, it cannot be said to be preempted by ERISA.

Moreover, Section 625-B contains an explicit provision that totally eliminates state regulation if a plan covering severance pay *is created* by an employer or employee organization. Specifically, Section 625-B(3)(B) provides: "There shall be no liability for severance pay to an eligible employee if: . . . [t]he employee is covered by an express contract providing for severance pay, ..." Such a contractual arrangement presumably would constitute a plan created by an employer or employee organization for purposes of ERISA. It would be subject to the full panoply of requirements created in that statute and would then be immune from state regulation. Because Maine's severance pay statute is operative only when a privately created employee benefit plan covering severance pay is not in exist-

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ployer or employee organizations. In *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981) a New Jersey State law was held to be preempted because it eliminated a method for calculating pension benefits in a privately created plan that was permitted by ERISA. The statute implicated in *Alessi* was the New Jersey Workers' Compensation Act, which prohibited employers from reducing a retiree's pension benefits by an amount equal to the workers' compensation award for which the retiree was eligible. The Supreme Court held that ERISA leaves to the private parties who create the pension plan the determination of the amount of benefits that, once vested, cannot be forfeited. Since the parties in *Alessi* agreed on the offset, the Court held that the New Jersey law was preempted insofar as it eliminated this method of calculating pension benefits.

ence, it does not have a "connection with or reference to" an employee benefit plan covered by ERISA and is thus not preempted by Section 1144.[9]

III. *NLRA Preemption*

Unlike ERISA, the NLRA does not contain an explicit preemption provision. As a result, the NLRA's preemptive effect must be discerned by implication from the policies of the act. *Jones* v. *Rath Packing Co.*, 430 U.S. 519, 525 (1977). Halifax and amici argue that because the Maine severance pay statute mandates the substantive terms of its collective bargaining agreement, this state statute is preempted by the NLRA.

The NLRA was enacted in 1935 for the purpose of addressing industrial strife by encouraging collective bargaining. 29 U.S.C. § 151. Aimed at redressing "the inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract and employers who are organized in the corporate association," the NLRA's goal was to restore equality of bargaining power in the hope that depressed wage rates would thereby be resolved. 29 U.S.C. § 151. The act protects employees' rights to organize and to engage in concerted action in Section 7 and defines unfair labor practices by employers and labor organization in Section 8. 29 U.S.C. §§ 157, 159. As the Supreme Court noted in *Metropolitan Life Insurance Co.* v. *Massachusetts*, 105 S.Ct. 2380, 2396 (1985), "The NLRA is concerned primarily with establishing an equitable *process* for determining terms and conditions of employment, and not with particular substantive

[9]We need not decide whether the "express contract" exclusion of section 625-B(3)(B) must necessarily reach every informal plan meeting the ERISA definition. *See Gilbert* v. *Burlington Industries, Inc.*, 765 F.2d 320 (2d Cir. 1985).

terms of the bargain that is struck when the parties are negotiating from relatively equal positions." (Emphasis added.)

Grounding its decisions in the policies of the NLRA, the Supreme Court has discerned two different principles of preemption that flow from the act. The first is based on implied congressional intent to leave certain conduct that is neither protected nor prohibited by either Section 7 or 8 of the act unrestricted from most forms of regulation by either the NLRB or the states. *Teamsters Local 20* v. *Morton*, 377 U.S. 252 (1964); *Machinists* v. *Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 140 (1976). Cases dealing with this type of preemption . . . "rely on the understanding that in providing in the NLRA a framework for self-organization and collective bargaining, Congress determined both how much the conduct of unions and employers should be regulated and how much should be left . . ." to the free play of economic forces. *Metropolitan Life*, 105 S.Ct. at 2395.

Despite the seeming broad range of this branch of NLRA preemption, state laws of general application that impose minimal substantive requirements on contract terms are not preempted.[10] As the Supreme Court noted in *Metropolitan Life*:

[10]Those state laws that have been held by the Supreme Court to be preempted invariably involve attempts by the state to regulate employer or employee conduct and control the collective bargaining process. Thus, in *Teamsters Local 20* v. *Morton*, 377 U.S. 252 (1964), the Court struck down an Ohio law that prohibited a type of secondary boycott and ruled that if the state law were allowed to deprive the union of this self-help weapon "the inevitable result would be to frustrate the congressional determination to leave this weapon of self-help available and to upset the balance of power between labor and management expressed in our national labor policy." *Id.* at 260. Similarly, in *Machinists* v. *Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976), the Court overruled a state law that penalized a concerted refusal to work overtime and held that this conduct by organized employees was intended to be unregulated as a self-help mechanism.

> Most significantly, there is no suggestion in the legislative history of the Act that Congress intended to disturb the myriad of state laws then in existence that set minimum labor standards, but were unrelated in any way to the processes of bargaining or self-organization. To the contrary, we believe that Congress developed the framework for self-organization and collective bargaining of the NLRA within the larger body of state law promoting public health and safety. The states traditionally have had great latitude under their police powers to legislate as " 'to the protection of lives, limbs, health, comfort and quiet of all persons.' " *Slaughter-House Cases*, 16 Wall. 36, 62 (1873) quoting *Thorpe* v. *Rutland & Burlington R. Co.*, 27 Vt. 140, 149 (1855). "States possess broad authority under their police powers to regulate the employment relationship to protect workers within the State. Child labor laws, minimum and other wage laws, laws affecting occupational health and safety . . . are only a few examples." *DeCanas v. Bica*, 424 U.S. 351, 356 (1976). State laws requiring that employers contribute to unemployment and workmen's compensation funds, laws prescribing mandatory state holidays and those dictating payment to employees for time spent at the polls or on jury duty all have withstood scrutiny. *See e.g., Day-Brite Lighting, Inc.* v. *Missouri*, 342 U.S. 421 (1952).

Id. at 2398.

Maine's severance pay law is a statute of general application that affects union and nonunion employees equally. Designed to protect Maine citizens from the economic dislocation that accompanies closing of large establishments, the severance pay statute is a legitimate exercise of the state's police power. *Shapiro Bros. Shoe Co., Inc.* v. *Lewiston Auburn S.P.A.*, 320 A.2d 247, 254 (Me. 1974); *State* v. *Union Oil Co. of Maine*, 151 Me. 438, 120 A.2d 708 (1956). The statute, in fact, has

a very limited impact on the collective bargaining process inasmuch as it does not ever apply when the parties have reached an agreement on the subject of severance pay via an express contract. Although Section 625-B does affect the collective bargaining relationship by encouraging employers to either agree to some form of severance pay contract or face liability under the act, it does not limit the rights of self-organization or forms of collective bargaining protected by the NLRA and is not preempted by the act.

The second line of preemption that can be discerned from Supreme Court cases interpreting the NLRA protects the primary jurisdiction of the NLRB to determine what kind of conduct is either prohibited or protected by the NLRA and was most thoroughly explored in *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959). Under the *Garmon* rule, preemption of a state law must occur:

> When it is clear or may fairly be assumed that the activities which a state purports to regulate are protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, ...

Id. at 244. *Garmon* preemption accomplishes Congress's purpose of creating an administrative agency in charge of creating detailed rules to implement the act, rather than having the act enforced and interpreted by the state or federal courts.

As a result, state statutes that have been held to be preempted under *Garmon* involve state action that attempts to directly regulate conduct protected under Section 7 or prohibited under Section 8. Thus, in *Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America* v. *Lockridge*, 403 U.S. 274 (1971) the Supreme Court held that a state court did not have jurisdiction of a claim filed against a union

by an employee who was fired for failure to pay union dues because the union's conduct was covered by either Section 7 or 8 thus subject to the jurisdiction of the NLRA.

Conversely, other Supreme Court cases denying preemption often recognize the importance of the state interest involved and uphold the state activity. In *Farmer* v. *United Brotherhood of Carpenters & Joiners of America*, 430 U.S. 290 (1977), the Court held that the NLRA did not preempt the state tort action for intentional infliction of emotional distress arising in connection with a claim of employment discrimination by the union because the state had a substantial interest in protecting its citizens from the outrageous conduct alleged.

Halifax and amici contend that the Maine severance pay law regulates conduct protected by the NLRB by (1) imposing a different resolution to a bargaining impasse than is required by Section 8(d)[11] and (2) interfering with the employer's right under section 7 to implement its last best offer unilaterally. Despite Halifax's attempt to characterize the severance pay statute as interfering with these employer rights and thus with the jurisdiction of the NLRB, its arguments on this score simply amount to a restatement of the position that Maine may not

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[11]Section 8(d) provides in part:

> (d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal *or require the making of a concession*. . . .

(Emphasis added.)

employ its police power to enact a law of general application that has an effect on the collective bargaining process. As such, Halifax's contentions do not even implicate *Garmon*-type preemption. Moreover, even if we were to decide that Section 625-B does interfere with the jurisdiction of the NLRB, the statute would be saved from preemption under the reasoning of *Farmer* set out above because it reflects the state's substantial interest in protecting Maine citizens from the economic dislocation that accompanies large-scale plant closings.

IV. *Constitutional Challenge*

Halifax also contends that the application of section 625-B in these circumstances will result in an unconstitutional impairment of contractual obligations and the imposition of liability without due process. Halifax apparently considers that the impact of the statute will impair the agreement between Halifax and its predecessor as well as the agreement between Halifax and its employees. First, Halifax has not identified any obligation between itself and its predecessor that will be impaired by the statute's operation. Second, the collective bargaining agreement governing Halifax's employees was executed in 1979, almost four years after the effective date of the statute. We have previously observed that "the law in effect at the time of the execution of a contract becomes part of that contract." *Portland Savings Bank* v. *Landry*, 372 A.2d 573, 575 (Me. 1977).

Halifax relies principally upon the decision of the Supreme Court in *Allied Structural Steel* v. *Spannaus*, 438 U.S. 234 (1978). Halifax asserts that the facts in *Allied Structural Steel* were remarkably similar to the facts in the case at bar. That assertion overlooks the fact that the Minnesota statute struck down in *Allied Structural Steel* was applied to a preexisting contract and may even have been aimed at a particular employer. *See Energy Reserves Group* v. *Kansas Power and Light*

Co., 459 U.S. 400, 412 n.13 (1983). A careful reading of *Allied Structural Steel* reveals the significance of the temporal application of the Minnesota statute. The Court stated that a basic term of the contract was substantially modified retroactively and described the effect as a severe disruption of contractual obligations. *Allied Structural Steel*, 438 U.S. at 246, 47. Halifax, on the other hand, entered into its 1979 labor agreement with the severance pay statute already on the books. Thus, Halifax fails to get across the threshold inquiry of whether the state law has operated to impair substantially a contractual relationship. *Energy Reserves*, 459 U.S. at 411.

Finally, Halifax claims that the inclusion of pre-1975 periods of employment in the computation of severance pay constitutes an unconstitutional retroactive application of section 625-B. The Supreme Court has stated that a "statute is not retroactive merely because it draws upon antecedent facts for its operation." *Lewis* v. *Fidelity & Deposit Co. of Maryland*, 292 U.S. 559, 571 (1934). The operative events in the application of the severance pay statute are the relocation or termination of a covered establishment rather than the previous periods of employment. *Cf. Adams* v. *Buffalo Forge Co.*, 443 A.2d 932, 941-42 (Me. 1982) (application of strict liability statute to products sold prior to the effective date of the act). The severance pay statute does not violate due process even though the legislation imposes liability based in part on past acts. *See Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 16 (1976).

V. *Denial of Jury Trial*

Halifax also argues that it was improperly denied a jury trial by the Superior Court. Article I, Section 20 of the Maine Constitution provides in part:

> In all civil suits, and in all controversies concerning property, the parties shall have a right to trial by jury, except

> in cases where it has heretofore been otherwise practiced. . . .

In *State* v. *Anton*, 463 A.2d 703, 708 (Me. 1983), we held that this provision of the Maine Constitution preserves the right to a jury trial in civil actions *where that right existed when the Maine Constitution was adopted*. Specifically, in *Anton* the Court noted:

> When a new type of statutory action is created, the existence of a constitutional right to jury trial under article I, section 20 depends on the nature of the action. (Citation omitted.) If it is a kind that was heard and determined by a common law court with a right to jury trial prior to adoption of the Maine Constitution, then article I, section 20 guarantees that right today.

Id. at 709.

Thus, Article I, Section 20 does not apply to suits in equity or to civil proceedings not tried by jury in the common law courts. *Id.* at 708. Although Halifax attempts to characterize the present action as an "employment contract dispute," it is, instead, an action to recover serverance pay under 26 M.R.S.A. § 625-B. Inasmuch as Maine's severance pay statute creates a new cause of action unknown to the common law, no right to a jury trial existed for proceedings of this nature at the time the Maine Constitution was adopted. As a result, the trial justice correctly denied Halifax's request for a trial by jury.

VI. *Findings of Fact*

Although Halifax questions several factual findings made by the Superior Court, we determine that the court committed clear error only in its calculation of severance pay for 10 of the employees held to be eligible under Section 625-B. Halifax

contends that one month's severance pay was already disbursed to these 10 individuals and that this payment should have been subtracted from the final figure calculated by the Superior Court. We agree.

Pursuant to a March 28, 1985 Superior Court order, the parties to this action submitted a list of all Halifax employees and provided information regarding disputed severance pay. As part of complying with this order Halifax and the State agreed as follows:

> The parties agree that vacation pay (column VII of Attachment A) and severance pay (column VIII) must be subtracted from gross pay before obtaining the correct weekly average wage which is set forth in column XI.

The list submitted discloses that column VIII contains a severance pay figure for 10 individuals. By agreeing that this figure termed "severance pay" should be subtracted from the "gross pay" column before average weekly wage is determined, the State, in effect, has admitted that these 10 employees were already paid one week's severance pay by Halifax. As a result, the Superior Court's calculation of severance pay for these 10 employees must be altered by subtracting the amount listed in column VIII from the gross severance pay due these employees.

VI. *"Live-Haul" Employees*

Halifax also challenges the Superior Court's legal conclusion that the "live-haul" employees were employed by a "covered establishment" for the purpose of Section 625-B. It is Halifax's contention that the "covered establishment" phrase applies only to those who work physically within a plant. As a result, Halifax seeks to have this Court reverse the trial justice with respect to his award of severance pay to "live-haul" employees.

As was discussed above, Section 625-B requires that employers who terminate a "covered establishment" pay severance benefits to their employees. The term "covered establishment" moreover, is defined by the Act as "any industrial or commercial facility or part thereof which employs or has employed at any time in the preceding 12-month period 100 or more persons." 26 M.R.S.A. § 625-B(1)(A).

The Halifax packaging and processing plant in Winslow fits squarely within the definition of "covered establishment" delineated above. The "live-haul" employees, moreover, were employed by this facility. Although most of their activity occurred outside the physical space of the plant, the following facts support the trial justice's ultimate conclusion that they were employees of a "covered establishment" for purposes of the Act: (1) the men were paid by Halifax, (2) their jobs were essential to Halifax's poultry processing operations, (3) "live-haulers" reported to the plant and were supervised by Halifax foremen, (4) these employees were rendered unemployed by the closing. As a result, the Superior Court's award of severance pay to the "live-haul" employees must be sustained.

VII. *Necessity of Arbitration*

As its final issue on appeal, the employer argues that questions concerning liability for severance pay should have been first submitted to arbitration in light of the mandatory arbitration provision in the collective bargaining agreement with Local 385. We disagree.

Article IV, Section 5 of the collective bargaining agreement in existence between Halifax and Local 385 does provide for arbitration when "grievances arise concerning the interpretation or application of the terms" of the contract. However, the claim for severance pay that is the subject of this suit does not

arise out of the contract. In the first place, the State is the central party bringing this action under Section 625-B for all Halifax employees, union and non-union alike. Second, the contract in existence between Halifax and Local 385 at the time of the closing did not address severance pay. Consequently, resort directly to the courts by the Director of the Bureau of Labor Standards was appropriate.

The entry is:

> Judgment modified in accordance with the opinion herein to subtract severance pay already paid, and as so modified, affirmed.

All concurring.

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APPENDIX B

May 2, 1985—Judgment and Order of the Superior Court for Kennebec County, Maine

STATE OF MAINE

SUPERIOR COURT

KENNEBEC, ss.

Civil Action,
Docket No. CV-81-516/515

MARVIN W. EWING, Director of the Bureau of Labor Standards, Maine Department of Labor

—v.—

FORT HALIFAX PACKING COMPANY, INC.

and

RAYMOND BOURGOIN, *et al.*

—v.—

FORT HALIFAX PACKING COMPANY, INC.

ORDER

The trial of these consolidated cases was held on April 1, 1985 before the Court sitting without a jury. At issue is whether defendant Fort Halifax Packing Company, Inc. ("Fort Halifax") owes severance pay to former employees, pursuant to 26 M.R.S.A. § 625-B (Supp. 1984-1985). Defendant contends: 1) that section 625-B is not applicable on the facts of this case, and 2) that if section 625-B is applicable, defendant has met its obligations under the statute. After reviewing the evidence and arguments presented by the parties, the Court concludes

that section 625-B is applicable to defendant and that defendant has not fully met its obligations under the statute.

Fort Halifax is a Maine corporation with its principal place of business in Winslow. Fort Halifax is a wholly owned subsidiary of Corbett Enterprises, a Missouri corporation. In turn, Fort Halifax wholly owns Corbett Brothers, a Maine corporation. Fort Halifax's operations began in 1972 when it acquired the assets of the Ralston Purina Company located in Winslow, chiefly a broiler processing and packaging plant. Fort Halifax operated the Winslow poultry plant until May 23, 1981 when it laid off nearly all its employees.

Section 625-B(2) provides:

> Severance pay. Any employer who relocates or terminates a covered establishment shall be liable to his employees for severance pay at the rate of one week's pay for each year of employment by the employee in that establishment. The severance pay to eligible employees shall be in addition to any final wage payment to the employee and shall be paid within one regular pay period after the employee's last full day of work, notwithstanding any other provisions of law.

As used in section 625-B, a "covered establishment" means a facility "which employs or has employed at any time in the preceding 12-month period 100 or more persons." *See* 26 M.R.S.A. § 625-B(1)(A). Fort Halifax qualifies as a "covered establishment." Under section 625-B(3), there is no liability for severance pay if:

> A. Relocation or termination of a covered establishment is necessitated by a physical calamity;

> B. The employee is covered by an express contract providing for severance pay;
>
> C. That employee accepts employment at the new location; or
>
> D. That employee has been employed by the employer for less than 3 years.

Separate actions were brought by a small number of former employees and by the Director of the Bureau of Labor Standards (the "Director") to enforce the severance pay statute. In an opinion and order deciding cross motions for summary judgment in the case brought by the Director, *Ewing* v. *Fort Halifax Packing Company, Inc.*, CV81-516, this Court upheld the validity of section 625-B(2) against defendant's charges of preemption and unconstitutionality. Specifically, defendant argued that the Federal Employment Retirement Income Security Act ("ERISA), 29 U.S.C. § 1007, *et seq*, preempted Maine's severance pay statute. Defendant also argued that the Maine statute and its application was a violation of due process and equal protection, an improper exercise of the police power, and an impairment of contract. In a separate motion, defendant moved for summary judgment on a number of grounds, among them, that the National Labor Relations Act (the "NLRA"), 29 U.S.C. §§ 141, *et seq*, preempts Maine's severance pay statute. The presiding Justice denied that motion without opinion.

Now that the cases have been consolidated, defendant renews its argument that section 625-B is unconstitutional and is preempted by ERISA and the NLRA. Even if the law of the case doctrine did not stand as an obstacle to reopening these issues in the present case, this Court is unpersuaded by defendant's arguments on unconstitutionality and preemption.

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Turning to the central controversy, this Court must determine who among Fort Halifax's former employees is entitled to severance pay and the amount thereof. On the assumption that section 625-B(2) is enforceable, the non-administrative employees who worked exclusively at the plant are clearly entitled to severance pay under the statute. The sole question in regard to them is the amount of severance pay to which they are entitled.

The employees in dispute can be divided into four categories: 1) Corbett Farms employees, 2) feed mill employees, 3) "live haul" employees, and 4) administrative employees. Four Fort Halifax employees, Carl Fenwick, Betty Partridge, Robert Grenier, and Raymond Daigle, went to work for Corbett Farms, Inc. ("Corbett Farms"). At the time of their transfer, Corbett Farms was owned by Charles J. Auger who had been the president of Fort Halifax until the Winslow plant ceased operation. The four employees were transferred, with their consent, directly to Corbett Farms without any loss of pay or vacation benefits. Under these circumstances, the Court is compelled to conclude that the four Corbett Farms employees suffered no severance and are not entitled to severance pay.

The second category is composed of a unique class of one—Robert Grenier. Mr. Grenier worked at a feed mill owned by Corbett Brothers, some distance from the Fort Halifax plant. Mr. Grenier's supervisor was not an employee of Fort Halifax. Mr. Grenier, however, was on the Fort Halifax payroll, and he collected his wages at the Winslow complex. Mr. Grenier lost his job at the feed mill when the Fort Halifax plant was closed. Although Mr. Grenier received his paycheck from Fort Halifax, he was not employed at a "covered establishment" within the meaning of section 625-B(1)(A). Therefore, he is not entitled to severance pay from Fort Halifax.

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The "live haul" employees in dispute are Robert Cummings, Harold Hubbard, Larry Hubbard, Wilfred Morey, Edgar Pooler, Robert Richardson, Winslow Tobey, Lawrence Roy, William Bird, Durwood Dow, and Edison Hubbard. These men were employed and paid by Fort Halifax. They reported to the Fort Halifax plant and were supervised by a Fort Halifax foreman in their job of gathering chickens from outlying farms. The live haulers lost their jobs as a result of the plant closing. The live haulers were an essential part of Fort Halifax's integrated operation. Although much of the physical activity required by their job occurred off the premises of the Winslow plant, their performance constituted an integral part of the operation of the plant. The live haulers met at the Winslow plant and received instructions at the Winslow plant. They then went to outlying farms and "caught" the chickens needed for the production line of the plant. On these facts, the Court finds that the live haulers were employees at a "covered establishment" who are entitled to severance pay.

The final category consists of the administrative employees: Arthur Simpson, Norris Willette, Larry Corbin, David Gagnon, Fernando Roderique, Trene Boucher, Michael Aglio, Edward Daigle, Erwin Emery, and Eugene Bourgoin. Defendant does not dispute that the administrative employees worked at a "covered establishment" and are entitled to severance pay. Rather, defendant contends that these employees have been paid severance pay pursuant to express contracts between defendant and the administrative employees. Section 625-B(3)(B) provides that no liability for severance pay exists under the statute if an eligible employee "is covered by an express contract for severance pay."

Contrary to defendant's contentions, the evidence does not support the conclusion that the administrative employees and

defendant were parties to express contracts providing for severance pay. While defendant may have occasionally paid one month's salary to administrative employees who had been terminated other than for cause, there is no indication of any written or oral agreement between defendant and its employees concerning severance pay.

Despite the absence of an express agreement, defendant did pay some administrative employees money in addition to their earned salary after the plant ceased operations. Although these payments do not establish the existence of an express agreement, the parties have agreed that these payments along with unearned vacation pay must be subtracted from gross pay before obtaining the weekly average used to compute the total severance pay due pursuant to section 625-B(1)(H) and (2).

Finally, with respect to all employees defendant argues that if it is liable for severance pay, the liability extends only for years worked after 1975 when the severance pay statute achieved what is essentially its present form. The important time period in the statute is the number of years the employee worked at a "covered establishment" before termination. Although this time period may extend back beyond the 1975 amendment and although defendant will be liable to employees for years the employees worked at the "covered establishment" before defendant acquired the Winslow plant, this result is perfectly consistent with the purpose of the statute. In this case, the State seeks to apply the statute only to a termination occurring after the statute's enactment and amendments. There is no problem with retroactive application of the statute.

Accordingly, judgment is entered against defendant and in favor of the State for the benefit of the individual named em-

ployees in the following amounts together with interest and costs:

Robert Cummings	$1,874.85
Harold Hubbard	4,428.96
Larry Hubbard	2,222.57
Wilfred Morey	1,700.10
Edgar Pooler	748.62
Robert Richardson	1,982.54
Winslow Tobey	2,289.28
Lawrence Roy	4,518.24
William Bird	1,428.95
Durwood Dow	750.60
Edison Hubbard	826.71
Arthur Simpson	8,347.43
Norris Willette	4,482.75
Larry Corbin	5,041.92
David Gagnon	4,400.00
Fernando Roderique	5,972.95
Trene Boucher	1,300.90
Michael Aglio	3,395.79
Edwin Daigle	3,686.41
Erwin Emery	1,017.68
Eugene Bourgoin	8,667.60
Mary Cummings	648.92
Alice Gurney	4,391.28
Sharon Hutting	1,307.52
Nelsom Frappier	1,665.28
Raymond Bourgoin	6,562.08
Owen Wentworth	981.76
Ernest Willette	3,791.90
Michael Willette	747.87
Carrol Carey	5,870.18
Raymond Cayouette	6,547.44

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Dorothy Dyer	$4,667.00
Bronnick Kibbin	2,830.62
Regional Pooler	6,378.69
Leo Giguere	5,495.04
Frank Bickford	7,006.44
Jerry Grivois	580.44
Lucien Bard	2,247.96
Alfred Landry	2,197.56
Norman Madore	708.28
Allen Mullen	889.65
Robert Myers	840.70
Dana Nelson	1,028.60
Clarence Hachey	3,977.76
Steven Harrison	784.04
Gregory Ivory	841.25
Larry Allen	1,450.72
Gary Gagnon	719.60
Rita York	2,114.88
Warren York	2,142.60
George McAdoo	1,026.24
Rhonda Porter	649.80
Joan Hudson	3,886.54
Elizabeth Kelly	1,113.21
Deborah Lamontagne	1,091.23
Sally Goguen	702.44
Arlene Grandmaison	520.47
Rebecca Greene	2,652.00
Laura Grivois	885.10
Mavis Hanning	856.25
Norma Frappier	1,068.78
Joan Gagnon	3,113.89
Darhlene Crain	832.20
Dorothy Fields	526.86

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Rolande Folsom	$4,174.73
Bertha Knowles	1,364.40
Charles Anderson	4,964.96
Sylvia Anderson	3,890.64
Lawrence Belanger	3,563.70
Carol Sawtelle	674.35
Jacqueline Vashon	810.30
Muriel Vigue	1,818.30
Ruth Poulin	493.77
Jean Bard	3,027.96
Mary Berube	1,875.25
David Breton	1,413.96
Nancy Duplissee	490.26
Rose Giguere	3,854.57
John Thomas	2,936.16
Audrey Tyler	3,767.10
Roland Grenier	8,680.36
Charlene Sweet	1,592.03
Bruce Tibbetts	1,820.06
Clyde Young	7,164.82
Jeannie Labbe	495.51

Dated: May 2, 1985.

DANIEL E. WATHEN
Justice, Superior Court

APPENDIX C

October 29, 1982—Opinion and Order of the Superior Court for Kennebec County, Maine

STATE OF MAINE

SUPERIOR COURT

KENNEBEC, SS

CIVIL ACTION
Docket No. CV81-516

MARVIN W. EWING,

Plaintiff

—v.—

FORT HALIFAX PACKING COMPANY, *et al.*,

Defendants

OPINION AND ORDER

This matter is before the Court as a result of a suit by the Director of the Bureau of Labor Standards of the State of Maine, Department of Labor on behalf of former employees of Defendants, Fort Halifax Packing Company and Corbett Brothers, Inc. to recover severance pay for these employees pursuant to 26 M.R.S.A. § 625-B(5). The parties have filed cross motions for summary judgment and other motions which seek to reach the merits of the dispute.

Review of the depositions, responses to interrogatories and other pleadings discloses the following significant facts:

Defendants, Fort Halifax and Corbett Brothers, produced and processed poultry and poultry products in Maine from May

1972 until May 23, 1981. The principal facilities in this operation were a poultry processing and packing plant at Winslow, Maine (the Fort Halifax plant), an egg packing plant and two hatcheries in Winslow and two feed mills. Only the Fort Halifax plant operated by Defendant Fort Halifax Packing Company employed more than 100 people at a single facility from May 23, 1980 to May 23, 1981. All the facilities combined employed approximately 200 people in that time period.

On May 23, 1981, Defendants ceased all poultry operations and laid off all of the approximately 200 employees except several maintenance men and clerical employees. In June 1981, Defendants sold their egg packing plant, one hatchery, one feed mill, inventory and rolling stock to Corbett Farms.

Defendants, Fort Halifax and Corbett Brothers, are part of a larger corporation known as Corbett Enterprises, a Missouri corporation with its principal place of business at Hartford, Connecticut. Fort Halifax is a wholly owned subsidiary of Corbett Enterprises and Corbett Brothers is a wholly owned subsidiary of Fort Halifax.

Corbett Brothers supplied Fort Halifax with broilers which were processed at the Fort Halifax plant. Broiler eggs were hatched at the Corbett Brothers hatcheries. Once hatched, the chicks were then moved to farms where they were grown by individual farmers pursuant to a contractual agreement. When the chicks had grown into broilers, they were shipped by a truck to the Fort Halifax plant where they were processed. Corbett Brothers also packed table eggs grown on independent farms.

The Maine severance pay statute provides, in part that:

> Any employee [sic] who . . . terminates a covered establish-

ment shall be liable to his employees for severance pay at the rate of one week's pay for each year of employment by the employee in that establishment. 26 M.R.S.A. § 625-B(2).

While Defendants dispute that their operations have terminated, Defendants have admitted that all poultry and related operations ceased in May of 1981. Defendants have not grown or processed poultry for over seventeen (17) months. They have no definite plans to reopen.

With the exception of several maintenance employees, Defendants have not recalled any of the employees laid off in May of 1981. Pursuant to the collective bargaining agreement between Fort Halifax and Local 385, union members lost all seniority rights after being on lay off for over one year. (Agreement, Article V, section 6).

Addition of Corbett Enterprises to the Suit

As a preliminary procedural matter, the State seeks to join Corbett Enterprises as a party defendant. As the parent corporation of the present Defendants, Corbett Enterprises is an "employer" within the meaning of 26 M.R.S.A. § 625-B(1)(C). Corbett Enterprises is a "person who directly or indirectly owns and operates a covered establishment," 26 M.R.S.A. § 625-B (1)(C), and is thus liable for severance pay. 26 M.R.S.A. § 625-B(2).

Corbett Enterprises has been directly involved in the present litigation. It loaned substantial funds to Fort Halifax Packing Company, Inc., to pay off creditors. It has been paying some employee benefits. Harvey A. McGuire, Jr., a project manager for Corbett Enterprises, has assisted in reorganization of the

Maine operations. The Board of Directors of Corbett Enterprises has been involved in restructuring the Maine operations.

This close organizational and working relationship among Fort Halifax Packing Company, Inc., Corbett Brothers, Inc. and Corbett Enterprises justifies joining Corbett Enterprises as a party defendant. There can be no question that Corbett Enterprises has sufficient contacts with the State to give this Court jurisdiction of their operation, 14 M.R.S.A. § 704-A, see *Tyson* v. *Whitaker & Son, Inc.*, Me., 407 A.2d 1 (1979). Thus, the State's motion to amend their complaint, and to join Corbett Enterprises as a party defendant will be granted. The State must, of course, serve Corbett Enterprises with the appropriate pleadings, as amended, and this should be accomplished within 20 days of this order.

Validity of § 625-B(2)

In examining the legal issues, the Court must initially address two general objections which the Defendants raise to application, to them, of the severance pay statute. 26 M.R.S.A. § 625-B(2). The first objection is that Maine severance pay law is preempted by the Federal Employment Retirement Income Security Act (ERISA), 29 U.S.C. § 1001, et seq., and thus invalid under the Supremacy Clause, Art. VI of the United States Constitution. The second is that the Maine statute has federal constitutional defects because of alleged retroactive application and due process and contract interference problems.

ERISA

The Federal Employment Retirement Income Security Act, supra establishes certain standards for benefit and pension plans where they exist. It does not compel establishment of such plans. It would take a truly strained view of ERISA, which was

designed to protect and preserve employee benefit rights, to interpret it to overturn a state law protecting discharged employees and to deprive those employees of the meager benefits established under state law.

The tensions inherent in the constitution between the Supremacy Clause and the Tenth Amendment have been exacerbated in recent years as increasing numbers of special interest groups have successfully pressed their clients in Congress to preempt a wide range of state laws enacted to protect the public interest. This headlong rush of Congress to preempt state laws and centralize control of many matters in Washington, where the power of special interests is most easily brought to bear, may cause some courts to reconsider and revive the long dormant provisions of the Tenth Amendment. However, in this case, neither the face of the statute, nor its legislative history supports the Defendants' position on preemption.

Defendants claim the severance pay statute is unenforceable by virtue of 29 U.S.C. § 1144(a) which states:

> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title . . .

The subject targeted in ERISA is the employer-employee relationship as expressed in private benefit plans, not state statutes enacted pursuant to the police power to alleviate the impact of job termination. 29 U.S.C. § 1003(a). The severance pay provisions of 26 M.R.S.A. § 625-B are not employee benefit plans as defined in 29 U.S.C. § 1002. These provisions

are not "plans" and are not "established or maintained" by an "employer" or an "employee organization." ERISA, in fact, only addresses severance pay indirectly by reference to 29 U.S.C. § 186(c), 29 U.S.C. § 1002(1)(B). This section of the Labor Management Relations Act proscribes certain financial transactions between employers and employee representatives. Section 186(c)(6) of Title 29, excludes from the restrictions

> . . . money or other things of value paid by any employer to a trust fund established by such representative [of his employees] for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs . . .

The emphasis once again is on employer-employee developed programs. The effect of 29 U.S.C. § 1002(1)(B) is to include within the definition of "employee welfare benefit plan" "those *plans* which provide holiday and severance benefits . . ." 29 C.F.R. § 2510.3-1(a)(3). (emphasis added)

The Maine severance pay statute does not operate at all in instances where employers and employees have an "express contract providing for severance pay." 26 M.R.S.A. § 625-B (3)(B). Thus, while the statute addresses the problem of severance pay, it does not regulate any employee benefit plan described in ERISA or otherwise relate to employee benefit plan[s] which are the subject matter regulated by ERISA, cf. 29 U.S.C. § 1144(a); *Bell* v. *Employee Security Benefit Association*, 437 F.Supp. 382, 392 (D. Kan. 1977).

The ERISA preemption issue has been subject to varying interpretation by courts and commentators, cf. *Standard Oil Co. of California* v. *Agsalud*, 633 F.2d 760 (9th Cir. 1980); aff'd — U.S. —, 102 S.Ct. 79 (1981). (ERISA preempts

laws conferring benefits); *Wadsworth* v. *Whaland*, 562 F.2d 70, 78 (1st Cir. 1977), cert. denied, 435 U.S. 980 (1978) (ERISA does not preempt state law applicable to group insurance policies purchased by employee benefit plans); *Gast* v. *State*, 36 Ore. App. 441, 585 P.2d 12 (1978) (ERISA does not preempt law requiring pregnancy and childbirth benefits); Hutchinson and Ifshin, "Federal Preemption of State Law Under the Employee Retirement Income Security Act of 1974," 46 U.Chi.L.Rev. 23 (1978); Note, "ERISA Preemption of State Law: The Meaning of Relate To in Section 514," 58 Wash.U.L.Q. 143 (1980).

The ERISA preemption issue was presented to the U.S. Supreme Court in *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 68 L.Ed.2d 402 (1981). The Court held therein that a New Jersey statute which prohibited offsets of retirement and workers' compensation benefits was "relate[d] to pension plans" and therefore preempted by ERISA, 68 L.Ed.2d at 416-417. The Court declined to determine the "outer bounds of ERISA's pre-emptive language" and noted that other courts had reached varying conclusions as to the meaning of the pre-emptive language. Id. at 417-418 and n.21.

Maine's severance pay statute § 625-B(2) addresses the vital state interest of protecting the economy and workers from the impact of a business leaving a community; is not inconsistent with the national policy expressed in ERISA; and does not affect directly any employee benefit plan, therefore it is not preempted by ERISA.

Constitutional Issues

The general constitutional questions raised by the Defendants—due process, equal protection, impairment of contracts,

improper exercise of police power—have basically been resolved by the Law Court, against the Defendants' position, in *Shapiro Brothers Shoe Co.* v. *Lewiston-Auburn Shoeworkers Protective Association*, Me., 320 A.2d 247 (1974). Further, there is no problem here of retroactive application. The State is not seeking to apply the severance pay compensation provisions to terminations which occurred prior to enactment of the severance pay law. The law is only setting a standard of compensation levels for those who are terminated and otherwise eligible for compensation in accordance with the severance pay statute.

"Covered Establishment" Question

With Defendants general challenges to the applicability of the severance pay statute rejected, the Court turns to the central legal issue of this case—what might be best described as the segregation-integration issue. The severance pay statute does not cover every industrial or commercial facility. It is limited in application to a "covered establishment."

Pursuant to § 625-B(1)(A) "covered establishment" means: "any industrial or commercial facility or part thereof which employs or has employed at any time in the preceding 12-month period 100 or more persons." The term "employer" is separately defined at § 625-B(1)(C) as "any person who directly or indirectly owns and operates a covered establishment." The State argues that Fort Halifax and Corbett Brothers function as one fully integrated business operation, albeit at several locations. Because they are a fully integrated operation, the State argues that this entire business is the "covered establishment" and that therefore all employees of Fort Halifax and

Corbett Brothers are eligible for severance pay pursuant to § 625-B(2).

At oral argument, the State urged that this expansive definition of the term "covered establishment" promotes the salutary policy goal of the Legislature to make severance pay available to discharged employees. It is, of course, up to the Legislature to determine—subject to equal protection and due process requirements—the appropriate scope of coverage of the severance pay requirement, and it does not appear that the Legislature intended to go as far as the State suggests in this case. Under the State's construction any "employer" which employed 100 or more persons, would be liable for severance pay if the employer's business operation was terminated, regardless of how many facilities were involved in the business operation. Such an interpretation would render the definition of "covered establishment" § 625-B(1)(A) surplusage since the ends asserted by the State could be accomplished by defining the term employer as "any person who has employed 100 or more persons."

Instead, the definition "covered establishment" appears to be a limitation on the general definition of employer which suggests that the employer's operations ought to be broken down and that each individual facility is to be examined to determine eligibility for severance pay. Only through this interpretation does the term "covered establishment" have independent, viable meaning in the statutory context. Since courts must seek interpretations of statutes which give meaning to every term in the statute, *Labbe* v. *Nissen Corp.*, Me., 404 A.2d 564 (1979); *National Newark and Essex Bank* v. *Hart*, Me., 309 A.2d 512 (1973), the Court is bound to adopt this narrower interpretation. That interpretation is further confirmed by examination of the definition "covered establishment" itself

which speaks, in the singular, of "any industrial or commercial facility or part thereof." This again suggests a breakdown of the employer's operations to specific facilities, and then examination of each specific facility to determine if it falls above or below the 100 employee eligibility line for severance pay. Thus, only individual facilities which terminate operations and which at the time of termination have employed 100 or more persons at any time within the past 12 months are covered establishments, § 625-B(1)(A) that will be required to pay severance pay to their terminated employees pursuant to § 625-B(2).

With this interpretation, it appears that there are no disputes as to material facts that no single Corbett Brothers facility employed 100 or more persons at any time relevant to this proceeding. Instead, the Corbett Brothers employees were distributed through several separate facilities; the largest of which may have employed 40 persons. Thus, even assuming that the parent corporation, Corbett Enterprises, is the "employer" pursuant to § 625-B(!)(C), no person who worked at the Corbett Brothers facility would be eligible for severance pay because no Corbett Brothers facility employed 100 or more persons in the 12 months immediately preceding May 23, 1981. Accordingly, the Court will grant the Defendants' motion for summary judgment as to the Corbett Brothers employees.

The remaining issue is whether there are any disputes as to material fact as to the eligibility status of persons who were employed at the Fort Halifax plant and related offices prior to May 23, 1981. Review of the depositions, responses to interrogatories and affidavits in the file has convinced the Court that there are no disputes as to material fact that as of May 23, 1981 the Fort Halifax plant then employed, or had employed at some time in the preceding 12-month period, 100 or more persons. While the exact number of persons so employed can-

not be determined with certainty, it does appear certain that the threshold 100 number was crossed making the Fort Halifax plant a "covered establishment" as that term is defined in § 625-B(1)(A).

The Defendants object that the Fort Halifax plant is not in fact a "covered establishment" because it is not an industrial or commercial facility, but rather an agricultural operation not covered by § 625-B(1)(A). However, it appears to be well established by precedent in Maine and elsewhere that a facility which processes agricultural products is not thereby rendered an agricultural facility to exempt it from coverage of laws which make distinctions on coverage according to the status of a facility as an agricultural versus an industrial or commercial facility. *C.M.T. Co., Inc.* v. *Maine Employment Security Commission*, 156 Me. 218 (1960); *N.L.R.B.* v. *Scott Paper Co.*, 440 F.2d 625, 626 n.3 (1st Cir. 1971); *N.L.R.B.* v. *Gass*, 377 F.2d 438, 444 (1st Cir. 1969); *Hinson* v. *Creech*, 209 S.E.2d 471 (N.C. 1974); *Chicago R.I. and P.Y. Co.* v. *State*, 201 P. 260 (Okla. 1921), compare *Drummonds Poultry Transportation Service* v. *Wheeler*, 178 F.Supp. 12 (D. Me. 1959). Thus, the Court determines that there are no disputes as to material fact that the Fort Halifax plant and related operations constitute an industrial or commercial facility as that term is applied in § 625-B(1)(A).

The Defendants also urge that even if the Fort Halifax facility is a covered establishment, its operations have not been terminated to such a degree that the employees are eligible for severance pay under § 625-B(2). "Termination" is defined in § 625-B(1)(G) as "the substantial cessation of industrial or commercial operations in a covered establishment." In this case, while some minor clerical and maintenance operations have

continued, there is no dispute that the industrial or commercial operations—the processing of poultry—has ceased. Defendants argue that the operation has not really closed but that it is simply awaiting a rejuvenation in the economics of the broiler industry in order to reopen its doors and begin operations again. There is no dispute, however, that the plant has now been closed for seventeen (17) months. At oral argument on the cross motions, counsel for the Defendants honestly conceded that at some point in time the length of closure of a facility would be such as to render it closed, or terminated, for purposes of application of § 625-B(1)(G). The Court concludes that even without regard to the other incidents of closure which became apparent on May 23, 1981 or immediately thereafter, the length of time that the facility has remained closed without any plan or immediate prospects of reopening, now seventeen (17) months, makes the facility a closed facility and the industrial or commercial operations terminated operations for purposes of effectiveness of the severance pay statute.

Therefore, the Court determined that, as to the employees at the Fort Halifax packing facility, there are no disputes as to material facts that these employees are eligible for severance pay in accordance with the provisions of 26 M.R.S.A. § 625-B (2). Accordingly, summary judgment will be granted for the State as to the employees at the Fort Halifax processing plant.

Because substantial sums of money may be involved in this matter, and because the interests of the terminated employees who are eligible for severance pay would be best served by a prompt determination of their claims and entry of final judgment in this court, the interests of justice would be served by expediting determination of the claims made on behalf of the terminated Fort Halifax processing plant employees. Accordingly, the Court requests that the parties meet and then advise

the Court, either separately or together, no later than November 23, 1982 as to:

—the remaining discovery, if any, which needs to be done to identify potentially eligible former employees and their terms of service.

—the remaining disputes, if any, as to material facts relating to (a) the eligibility of particular employees and (b) the amount to which each employee would be entitled to pursuant to § 625-B(2).

—the amount of time anticipated before each party would be ready for trial on the remaining disputed facts, if any; and

—the length of time which it would be expected that such a trial, if any is needed, would take.

Therefore, the Court ORDERS and the entry shall be:

1. Defendants' motion to dismiss is **DENIED**.

2. Plaintiff's motion to amend to add Corbett Enterprises as a party defendant is **GRANTED**. If service cannot be made by agreement. Plaintiff shall effect service of the amended complaint upon Corbett Enterprises within 20 days.

3. Judgment for the Defendants, that the former employees of Corbett Brothers are not eligible for severance pay.

4. Judgment for the Plaintiff, that the former employees of the Fort Halifax poultry processing and packing plant are eligible for severance pay, subject to further determination as to the specific employees eligible to receive severance pay and the amount of severance pay that those employees should receive.

5. In all other respects the Plaintiff's motion for summary judgment and the Defendants' motion for summary judgment are **DENIED**.

6. The parties shall notify the Court by November 23, 1982 as to the actions that are necessary to resolve the remaining outstanding issues in accordance with the terms of this opinion.

Dated: October 29, 1982

DONALD G. ALEXANDER
Justice, Superior Court

APPENDIX D

August 1, 1986—Notice of Appeal to this Court

IN THE
LAW COURT OF THE SUPREME JUDICIAL COURT
STATE OF MAINE

LAW DOCKET NO. KEN-85-216

DECISION NO. 4142

FORT HALIFAX PACKING COMPANY, INC.,
Appellant

—v.—

MARVIN W. EWING,
Appellee

and

FORT HALIFAX PACKING COMPANY, INC.,
Appellant

—v.—

RAYMOND BOURGOIN, *et al.*
Appellee

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Fort Halifax Packing Company, Inc., the above-named appellant, appeals to the Supreme Court of the United States from the final judgment of the Maine Supreme Judicial Court in the captioned action, decided and entered on June 2, 1986, modifying and affirming a judgment

rendered in the Superior Court, Kennebec County, granting severance pay to certain of the appellant's employees pursuant to 26 M.R.S.A. § 625-B.

Appeal is taken to the United States Supreme Court under the authority of the United States Code, title 28, section 1257(2).

THE APPELLANT—FORT HALIFAX
PACKING COMPANY, INC.

By JOHN C. YAVIS, JR.

and

By THOMAS M. CLOHERTY

Both of:

Murtha, Cullina, Richter and Pinney
CityPlace—P.O. Box 3197
Hartford, Connecticut 06103-0197
Telephone: (203) 240-6000
Its Attorneys

CERTIFICATION

I, Thomas M. Cloherty, a member of the Bar of the United States Supreme Court, hereby certify pursuant to United States Supreme Court Rules 10.2 and 28 that on this 1st day of August, 1986, I caused to be deposited in a United States mailbox copies of the foregoing Notice of Appeal to the Supreme Court of the United States addressed to Office of the Clerk, Superior Court of Kennebec County, Kennebec County Courthouse, 95 State Street, Augusta, Maine 04330 which is the court "possessed of the record"; James E. Tierney, Attorney General, State of Maine, and Thomas D. Warren, Assistant Attorney General, State of Maine, State House Station #6,

August 1, 1986—Notice of Appeal to this Court

Augusta, Maine 04333; Attorney Martha Georges, Bell & Georges, 277 Lisbon Street, Lewiston, Maine 04240; and Attorney Linda D. McGill, Richard G. Moon, Esquire and John H. Rich, III, Esquire, Perkins, Thompson, Hinckley & Keddy, One Canal Plaza, P.O. Box 426, Portland, Maine 04112-0426.

THOMAS M. CLOHERTY

Subscribed and sworn to before me, this 1st day of August, 1986.

Notary Public: GINA LEONE

My Commission Expires
4/1/90

APPENDIX E

Statutes Involved

26 M.R.S.A. § 625-B

§ 625-B. Severance pay

1. DEFINITIONS. As used in this section, unless the context otherwise indicates, the following words shall have the following meanings.

A. "Covered establishment" means any industrial or commercial facility or part thereof which employs or has employed at any time in the preceding 12-month period 100 or more persons.

B. "Director" means the Director of the Bureau of Labor.

C. "Employer" means any person who directly or indirectly owns and operates a covered establishment.

D. "Person" means any individual, group of individuals, partnership, corporation, association or any other entity.

E. "Physical calamity" means any calamity such as fire, flood or other natural disaster, or the final order of any federal, state or local governmental agency including adjudicated bankruptcy.

F. "Relocation" means the removal of all or substantially all of industrial or commercial operations in a covered establishment to a new location, within or without the State of Maine, 100 or more miles distant from its original location.

G. "Termination" means the substantial cessation of industrial or commercial operations in a covered establishment.

H. "Week's pay" means an amount equal to 1/52nd part of the gross wages paid to an employee during the 12 months prior to relocation or termination.

2. SEVERANCE PAY. Any employer who relocates or terminates a covered establishment shall be liable to his employees for severance pay at the rate of one week's pay for each year of employment by the employee in that establishment. The severance pay to eligible employees shall be in addition to any final wage payment to the employee and shall be paid within one regular pay period after the employee's last full day of work, notwithstanding any other provisions of law.

3. MITIGATION OF SEVERANCE PAY LIABILITY. There shall be no liability for severance pay to an eligible employee if:

A. Relocation or termination of a covered establishment is necessitated by a physical calamity;

B. The employee is covered by an express contract providing for severance pay;

C. That employee accepts employment at the new location; or

D. That employee has been employed by the employer for less than 3 years.

4. SUITS BY EMPLOYEES. Any employer who violates the provisions of this section shall be liable to the employee or employees affected in the amount of their unpaid severance pay. Action to recover the liability may be maintained against any employer in any state or federal court of competent jurisdiction by any one or more employees for and on behalf of himself or themselves and any other employees similarly situated. Any labor organization may also maintain an action on behalf of its members. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a

reasonable attorney's fee to be paid by the defendant and costs of the action.

5. SUITS BY THE DIRECTOR. The director is authorized to supervise the payment of unpaid severance pay owing to any employee under this section. The director may bring an action in any court of competent jurisdiction to recover the amount of any unpaid severance pay. The right provided by subsection 4 to bring an action by or on behalf of any employee, and of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the director in an action under this subsection, unless the action is dismissed without prejudice by the director. Any sums recovered by the director on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the director, directly to the employee affected. Any sums thus recovered not paid to an employee because of liability to do so within a period of 3 years shall be paid over to the State of Maine.

6. NOTICE OF DIRECTOR. Any person proposing to relocate or terminate a covered establishment shall notify the director in writing not less than 60 days prior to the relocation.

6-A. NOTICE TO EMPLOYEES AND MUNICIPALITY. Any person proposing to relocate a covered establishment outside the State shall notify employees, and the municipal officers of the municipality where the plant is located, in writing not less than 60 days prior to the relocation. Any person violating this provision commits a civil violation for which a forfeiture of not more than $500 may be adjudged, provided that no forfeiture may be adjudged if the relocation is necessitated by a physical calamity, or if the failure to give notice is due to unforeseen circumstances.

7. POWERS OF DIRECTOR. In any investigation or proceeding under this section, the director shall have, in addition to all

other powers granted by law, the authority to examine books and records of any employer affected by this section as set out in section 665, subsection 1.

* * * * *

29 U.S.C. § 157

§ 157. RIGHT OF EMPLOYEES AS TO ORGANIZATION, COLLECTIVE BARGAINING, ETC.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

* * * * *

29 U.S.C. § 158

§ 158. UNFAIR LABOR PRACTICES

(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 156 of this title, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an

employee because he has filed charges or given testimony under this subchapter;

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

(b) It shall be an unfair practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 159(a) of this title;

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle

or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title: *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is

failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter: *Provided further,* That for the purpose of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

(5) to require of employees covered by an agreement authorized under subsection (a)(3) of this section the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(6) to cause or attempt to cause an employer to pay

or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring any employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this subchapter any other labor organization and a question concerning representation may not appropriately be raised under section 159(c) of this title,

(B) where within the preceding twelve months a valid election under section 159(c) of this title has been conducted, or

(C) where such picketing has been conducted without a petition under section 159(c) of this title being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided,* That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 159(c) (1) of this title or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further,* That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising

the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this subsection.

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit.

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided,* That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event

such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2) and (4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 159(a) of this title, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within any notice period specified in this subsection, or who engages in any strike within the appropriate period specified in subsection (g) of this section, shall lose his

status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 158, 159 and 160 of this title, but such loss of status for such employee shall terminate if and when he is reemployed by such employer. Whenever the collective bargaining involves employees of a health care institution, the provisions of this subsection shall be modified as follows:

(A) The notice of paragraph (1) of this subsection shall be ninety days; the notice of paragraph (3) of this subsection shall be sixty days; and the contract period of paragraph (4) of this subsection shall be ninety days.

(B) Where the bargaining is for an initial agreement following certification or recognition, at least thirty days' notice of the existence of a dispute shall be given by the labor organization to the agencies set forth in paragraph (3) of this subsection.

(C) After notice is given to the Federal Mediation and Conciliation Service under either clause (A) or (B) of this sentence, the Service shall promptly communicate with the parties and use its best efforts, by mediation and conciliation, to bring them to agreement. The parties shall participate fully and promptly in such meetings as may be undertaken by the Service for the purpose of aiding in a settlement of the dispute.

(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible and void: *Provided,* That nothing in

this subsection shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: *Provided further,* That for the purposes of this subsection and subsection (b) (4) (B) of this section the terms "any employer", "any person engaged in commerce or an industry affecting commerce", and "any person" when used in relation to the terms "any other producer, processor, or manufacturer", "any other employer", or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: *Provided further,* That nothing in this subchapter shall prohibit the enforcement of any agreement which is within the foregoing exception.

(f) It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon the employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in subsection (a) of this section as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 159 of this title prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such

employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area: *Provided,* That nothing in this subsection shall set aside the final proviso to subsection (a) (3) of this section: *Provided further,* That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 159(c) or 159(e) of this title.

(g) A labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention, except that in the case of bargaining for an initial agreement following certification or recognition the notice required by this subsection shall not be given until the expiration of the period specified in clause (B) of the last sentence of subsection (d) of this section. The notice shall state the date and time that such action will commence. The notice, once given, may be extended by the written agreement of both parties.

* * * * *

29 U.S.C. § 1002

§ 1002. DEFINITIONS

For purposes of this subchapter:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for

the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

(2)(A) Except as provided in subparagraph (B), the terms "employee pension benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

(i) provides retirement income to employees, or

(ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond,

regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

(B) The Secretary may by regulation prescribe rules consistent with the standards and purposes of this chapter providing one or more exempt categories under which—

(i) severance pay arrangements, and

(ii) supplemental retirement income payments, under which the pension benefits of retirees or their beneficiaries are supplemented to take into account some portion or all of the increases in the cost of living (as determined by the Secretary of Labor) since retirement,

shall, for purposes of this subchapter, be treated as welfare plans rather than pension plans. In the case of any arrangement or payment a principal effect of which is the evasion of the standards or purposes of this chapter applicable to pension plans, such arrangement or payment shall be treated as a pension plan.

(3) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

* * * * *

29 U.S.C. § 1003

§ 1003. COVERAGE

(a) Except as provided in subsection (b) of this section and in sections 1051, 1081, and 1101 of this title, this subchapter shall apply to any employee benefit plan if it is established or maintained—

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) by both.

(b) The provisions of this subchapter shall not apply to any employee benefit plan if—

(1) such plan is a governmental plan (as defined in section 1002(32) of this title);

(2) such plan is a church plan (as defined in section 1002(33) of this title) with respect to which no election has been made under section 410(d) of Title 26;

(3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(4) such plan is maintained outside of the United States primarily for the benefit of persons, substantially all of whom are nonresident aliens; or

(5) such plan is an excess benefit plan (as defined in section 1002(36) of this title) and is unfunded.

* * * * *

29 U.S.C. § 1144

§ 1144. OTHER LAWS

(a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provision of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

(b) Construction and application

(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 1003(a) of this title, which is not exempt under section 1003(b)

of this title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 1136 of this title.

(4) Subsection (a) of this section shall not apply to any generally applicable criminal law of a State.

(5)(A) Except as provided in subparagraph (B), subsection (a) of this section shall not apply to the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. §§ 393-1 through 393-51).

(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a) of this section—

(i) any State tax law relating to employee benefit plans, or

(ii) any amendment of the Hawaii Prepaid Health Care Act enacted after September 2, 1974, to the extent it provides for more than the effective administration of such Act as in effect on such date.

(C) Notwithstanding subparagraph (A), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the Hawaii Prepaid Health Care Act (as in effect on or after January 14, 1983), but the Secretary may enter into cooperative arrangements under this paragraph and section 1136 of this title with officials of the State of Hawaii to assist them in effectuating the policies of provisions of such Act which are superseded by such parts.

(6)(A) Notwithstanding any other provision of this section—

(i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangement to the extent that such law provides—

(I) standards, requiring the maintenance of specified levels of reserves and specified levels of contribution, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and

(II) provisions to enforce such standards, and

(ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this subchapter, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this subchapter.

(B) The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A)(ii), individually or by class, multiple employer welfare arrangements which are not fully insured. Any such exemption may be granted with respect to any arrangement or class of arrangements only if such arrangement or each arrangement which is a member of such class meets the requirements of section 1002(1) and section 1003 of this title necessary to be considered an employee welfare benefit plan to which this subchapter applies.

(C) Nothing in subparagraph (A) shall affect the manner or extent to which the provisions of this subchapter apply to an employee welfare benefit plan which is not a multiple employer

welfare arrangement and which is a plan, fund, or program participating in, subscribing to, or otherwise using a multiple employer welfare arrangement to fund or administer benefits to such plan's participants and beneficiaries.

(D) For purposes of this paragraph, a multiple employer welfare arrangement shall be considered fully insured only if the terms of the arrangement provide for benefits the amount of all of which the Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, qualified to conduct business in a State.

(7) Subsection (a) shall not apply to qualified domestic relations orders (within the meaning of section 1056(d)(3)(B)(i) of this title).

(c) Definitions

For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivision thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

(d) Alteration, amendment, modification, invalidation, impairment, or supersedure of any law of United States prohibited

Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 1031 and 1137(b) of this title) or any rule or regulation issued under any such law.

APPENDIX F

November 30, 1981—Answer in *Ewing* v. *Fort Halifax Packing Company, Inc.*

SUPERIOR COURT

STATE OF MAINE

KENNEBEC, ss.

CIVIL ACTION

DOCKET NO. 81-516

MARVIN W. EWING, Director, Bureau of Labor Standards, Maine Department of Labor, State of Maine, Augusta, Maine,

Plaintiff

—v.—

FT. HALIFAX PACKING COMPANY, INC.

and

CORBETT BROTHERS, INC.,

Defendants

ANSWER

NOW COME Defendants Ft. Halifax Packing Company, Inc. (correctly, "Ft. Halifax Packing Company") and Corbett Brothers, Inc. (correctly, "Corbett Brothers") and answer Plaintiff's Complaint as follows:

1. Defendants admit that Plaintiff is bringing an action pursuant to 26 M.R.S.A. § 625-B but deny that they are liable for severance pay under the statute. Defendant Ft. Halifax

Packing Company further states that its correct name is "Ft. Halifax Packing Company."

2. Defendants admit the allegations set forth in paragraph two of Plaintiff's Complaint.

3. Defendants admit the allegations set forth in paragraph three of Plaintiff's Complaint.

4. Defendants admit the allegations set forth in paragraph four of Plaintiff's Complaint.

5. Defendants deny each and every allegation set forth in paragraph five of Plaintiff's Complaint except that Defendants admit that on or about May 23, 1981, Defendant Ft. Halifax Packing Company temporarily shut down its plant in Winslow, Maine and employees were temporarily laid off.

6. Defendants deny each and every allegation set forth in paragraph six of Plaintiff's Complaint.

7. Defendants deny each and every allegation set forth in paragraph seven of Plaintiff's Complaint except that Defendants admit that they have been attempting to restructure the ownership and financing of Ft. Halifax Packing Company and Corbett Brothers. Defendants further admit that, effective June 1, 1981, a portion of the assets of Corbett Brothers were sold and have continued their poultry operations without interruption.

8. Defendants deny each and every allegation set forth in paragraph eight of Plaintiff's Complaint.

9. Defendants deny each and every allegation set forth in paragraph nine of Plaintiff's Complaint.

10. Defendants deny each and every allegation set forth in paragraph ten of Plaintiff's Complaint except that Defendants admit that no severance payments have been made.

FIRST AFFIRMATIVE DEFENSE

11. Plaintiff's Complaint fails to state a claim upon which relief may be granted to Plaintiffs.

SECOND AFFIRMATIVE DEFENSE

12. Ft. Halifax Packing Company is not a "covered establishment" as that term is defined in 26 M.R.S.A. § 625-B(1)(A) because it is not an "industrial or commercial facility."

THIRD AFFIRMATIVE DEFENSE

13. Corbett Brothers is not a "covered establishment" as that term is defined in 26 M.R.S.A. § 625-B(1)(A) because it is not an "industrial or commercial facility."

FOURTH AFFIRMATIVE DEFENSE

14. Corbett Brothers is not a "covered establishment" as that term is defined in 26 M.R.S.A. § 625-B(1)(A) because it has not "employed at any time in the preceding 12-month period 100 or more persons" in a "covered establishment."

FIFTH AFFIRMATIVE DEFENSE

15. Ft. Halifax Packing Company has not "relocated" its operations as that term is defined in 26 M.R.S.A. § 625-B (1)(F) because it has not removed "all or substantially all of its industrial or commercial operations in a covered establishment to a new location . . ."

16. Ft. Halifax Packing Company has not "terminated" its operations as that term is defined in 26 M.R.S.A. § 625-B (1)(G) because it has not effectuated a "substantial cessation of industrial or commercial operations in a covered establishment."

17. Absent a relocation or termination of a covered establishment within the meaning of 26 M.R.S.A. § 625-B, the said statutory provision is inapplicable to Defendants.

SIXTH AFFIRMATIVE DEFENSE

18. Corbett Brothers has not "relocated" its operations as that term is defined in 26 M.R.S.A. § 625-B(1)(F) because it has not removed "all or substantially all of its industrial or commercial operations in a covered establishment to a new location . . ."

19. Corbett Brothers has not "terminated" its operations as that term is defined in 26 M.R.S.A. § 625-B(1)(G) because it has not effectuated a "substantial cessation of industrial or commercial operations in a covered establishment."

20. Absent a relocation or termination of a covered establishment within the meaning of 26 M.R.S.A. § 625-B, the said statutory provision is inapplicable to Defendants.

SEVENTH AFFIRMATIVE DEFENSE

21. Plaintiff-employees continue to be employees of Defendants, laid off on temporary basis, because they still receive pension and other benefits incident to their employment, thereby waiving any claims that their employment may have been terminated.

EIGHTH AFFIRMATIVE DEFENSE

22. To the extent that any employees of Ft. Halifax Packing Company and Corbett Brothers have been employed for less than three years or have experienced an interruption in their employment within the three years prior to May 23, 1981, those employees qualify as employees "employed by the employer for less than three years."

23. Where employees have been employed for less than three years at the time their employment is terminated, within the meaning of 26 M.R.S.A. § 625-B, the severance pay benefits of that section are not available.

NINTH AFFIRMATIVE DEFENSE

24. Plaintiff's Complaint purports to allege a claim based on 26 M.R.S.A. § 625-B, which statutory provisions are invalid because they attempt to regulate employee benefit plans within the exclusive regulation of the Employees Retirement Income Security Act of 1974 which federal statute expressly pre-empts and supersedes state law.

TENTH AFFIRMATIVE DEFENSE

26. Application of the severance pay statute, 26 M.R.S.A. § 625-A as enacted by P.L. 1973, ch. 545, effective October 3, 1973 and as amended by P.L. 1975, ch. 512, effective October 1, 1975 in a retroactive manner to allow Plaintiff to recover statutory damages based on time worked prior to the enactment of the above referenced provision of the statute would unconstitutionally impair the obligation of contract in violation of the United States Constitution, Article I, Section 10 and the Maine Constitution, Article I, Section 11.

ELEVENTH AFFIRMATIVE DEFENSE

26. Application of the severance pay statute, 26 M.R.S.A. § 625-A as enacted by P.L. 1973, ch. 545, effective October 3, 1973 and as amended by P.L. 1975, ch. 512, effective October 1, 1975 in a retroactive manner to allow Plaintiff to recover statutory damages based on time worked prior to the enactment of the provisions of the statute would deprive Defendants of their property without due process of law in viola-

November 30, 1981—Answer in Ewing v. *Fort Halifax Packing Company, Inc.*

tion of the Fourteenth Amendment to the United States Constitution and Article I, Section 6-A of the Maine Constitution.

WHEREFORE, Defendants demand judgment dismissing the Complaint herein against them, together with the costs and disbursements of this action and for such other and further relief as this Court deems just and proper.

Dated at Portland, Maine this 30th day of November, 1981.

SIDNEY ST. F. THAXTER
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(207) 775-2361

Attorneys for Defendants

81-322-001

January 18, 1982—Answer in *Bourgoin* v. *Ft. Halifax Packing*

STATE OF MAINE
SUPERIOR COURT

KENNEBEC, ss.

CIVIL ACTION
DOCKET NO.

RAYMOND BOURGOIN, *et al.*,

Plaintiffs

—v.—

FT. HALIFAX PACKING,

Defendant

ANSWER

NOW COMES Defendant, Ft. Halifax Packing (correctly, "Fort Halifax Packing Company") and answers Plaintiffs' Complaint as follows:

1. Defendant denies each and every allegation of paragraph one of Plaintiffs' Complaint except that Defendant admits that Plaintiffs intend the above-captioned action to be brought to recover severance pay.

2. Defendant denies each and every allegation of paragraph two of Plaintiff's Complaint except that Defendant admits that Raymond Bourgoin is an employee of Fort Halifax Packing Company and that the duration of his employment is as stated in the Company's records.

3. Defendant denies each and every allegation of paragraph three of Plaintiff's Complaint except that Defendant admits that Clarence Hachey is an employee of Fort Halifax Packing

Company and that the duration of his employment is as stated in the Company's records.

4. Defendant denies each and every allegation of paragraph four of Plaintiff's Complaint except that Defendant admits that Reginald Pooler is an employee of Fort Halifax Packing Company and that the duration of his employment is as stated in the Company's records.

5. Defendant denies each and every allegation of paragraph five of Plaintiff's Complaint except that Defendant admits that Audrey Tyler is an employee of Fort Halifax Packing Company and that the duration of her employment is as stated in the Company's records.

6. Defendant denies each and every allegation of paragraph six of Plaintiff's Complaint except that Defendant admits that Dorothy Dyer is an employee of Fort Halifax Packing Company and that the duration of her employment is as stated in the Company's records.

7. Defendant denies each and every allegation of paragraph seven of Plaintiff's Complaint except that Defendant admits that Debbie Lamontagne is an employee of Fort Halifax Packing Company and that the duration of her employment is as stated in the Company's records.

8. Defendant denies each and every allegation of paragraph eight of Plaintiff's Complaint except that Defendant admits that Lawrence Belanger is an employee of Fort Halifax Packing Company and that the duration of his employment is as stated in the Company's records.

9. Defendant denies each and every allegation of paragraph nine of Plaintiff's Complaint except that Defendant admits that Raymond Caouette is an employee of Fort Halifax Packing Company and that the duration of his employment is as stated in the Company's records.

10. Defendant denies each and every allegation of paragraph ten of Plaintiff's Complaint except that defendant admits that Alice Gurney is an employee of Fort Halifax Packing Company and that the duration of her employment is as stated in the Company's records.

11. Defendant denies each and every allegation of paragraph eleven of Plaintiff's Complaint except that Defendant admits that Bertha Knowles is an employee of Fort Halifax Packing Company and that the duration of her employment is as stated in the Company's records.

12. Defendant denies each and every allegation of paragraph twelve of Plaintiff's Complaint except that Defendant admits that Eugene Bourgoin is an employee of Fort Halifax Packing Company and that the duration of his employment is as stated in the Company's records.

13. Defendant denies that its principal place of business is Augusta, Maine, but admits the remaining allegations set forth in paragraph thirteen of Plaintiff's Complaint.

14. Defendant denies each and every allegation set forth in paragraph fourteen of Plaintiffs' Complaint.

15. Defendant admits the allegations set forth in paragraph fifteen of Plaintiffs' Complaint.

16. Defendant denies each and every allegation set forth in paragraph sixteen of Plaintiffs' Complaint.

17. Defendant denies each and every allegation set forth in paragraph seventeen of Plaintiffs' Complaint.

18. Defendant denies each and every allegation set forth in paragraph eighteen of Plaintiffs' Complaint, except that Defendant admits that Plaintiffs are employees of Fort Halifax Packing Company who have been temporarily laid off.

19. Defendant denies each and every allegation set forth in paragraph nineteen of Plaintiffs' Complaint.

20. Defendant denies each and every allegation set forth in paragraph twenty of Plaintiffs' Complaint.

21. Defendant denies each and every allegation set forth in paragraph twenty-one of Plaintiffs' Complaint.

22. Defendant denies each and every allegation of paragraph twenty-two of Plaintiffs' Complaint, except that Defendant admits that no severance payments have been made.

23. Defendant denies each and every allegation set forth in paragraph twenty-three of Plaintiffs' Complaint.

FIRST AFFIRMATIVE DEFENSE

24. Plaintiffs' Complaint fails to state a claim upon which relief may be granted to Plaintiffs.

SECOND AFFIRMATIVE DEFENSE

25. Fort Halifax Packing Company is not a "covered establishment" as that term is defined in 26 M.R.S.A. § 625-B(1)(A) because it is not an "industrial or commercial facility."

THIRD AFFIRMATIVE DEFENSE

26. Fort Halifax Packing Company has not "relocated" its operations as that term is defined in 26 M.R.S.A. § 625-B (1)(F) because it has not removed "all or substantially all of [its] industrial or commercial operations in a covered establishment to a new location . . ."

27. Fort Halifax Packing Company has not "terminated" its operations as that term is defined in 26 M.R.S.A. § 625-B (1)(G) because it has not effectuated a "substantial cessation

of industrial or commercial operations in a covered establishment."

28. Absent a relocation or termination of a covered establishment within the meaning of 26 M.R.S.A. § 625-B, the said statutory provision is inapplicable to any matter alleged in Plaintiffs' Complaint.

FOURTH AFFIRMATIVE DEFENSE

29. Any or all of the Plaintiffs who had ceased and subsequently reinstituted their employment with Fort Halifax Packing Company within three years previous to this action qualify as employees "employed by the employer for less than three years."

30. Where employees have been employed for less than three years at the time their employment is terminated, within the meaning of 26 M.R.S.A. § 625-B, the severance pay benefits of that section are not available.

SIXTH AFFIRMATIVE DEFENSE

31. Plaintiff Eugene Bourgoin is employed in a managerial or supervisory position by Fort Halifax Packing Company.

32. Where persons are employed in supervisory or managerial positions, the provisions of 26 M.R.S.A. §§ 621-629 do not apply to any possible termination of their employment, due to the nature of their employment relationship and position with their employer.

SEVENTH AFFIRMATIVE DEFENSE

33. Plaintiffs' Complaint purports to allege a claim based on 26 M.R.S.A. § 625-B, which statutory provisions are invalid because they attempt to regulate employee benefit plans

within the exclusive regulation of the Employees Retirement Income Security Act of 1974 which federal statute expressly pre-empts and supersedes state law.

EIGHTH AFFIRMATIVE DEFENSE

34. Application of the severance pay statute, 26 M.R.S.A. § 625-A as enacted by P.L. 1973, ch. 545, effective October 3, 1973 and as amended (§ 625-B) by P.L. 1975, ch. 512, effective October 1, 1975 in a retroactive manner to allow Plaintiffs to recover statutory damages based on time worked prior to the enactment of the above referenced provisions of the statute would unconstitutionally impair the obligation of contract in violation of the United States Constitution, Article I, Section 10 and the Maine Constitution, Article I, Section 11.

NINTH AFFIRMATIVE DEFENSE

35. Application of the severance pay statute, 26 M.R.S.A. § 625-A as enacted by P.L. 1973, ch. 545, effective October 3, 1973 and as amended (§ 625-B) by P.L. 1975, ch. 512, effective October 1, 1975 in a retroactive manner to allow Plaintiffs to recover statutory damages based on time worked prior to the enactment of the provisions of the statute would deprive Defendants of their property without due process of law in violation of the Fourteenth Amendment to the United States Constitution and Article I, Section 6-A of the Maine Constitution.

WHEREFORE, Defendant demands judgment dismissing the Complaint herein against it, together with the costs and disbursements of this action and for such other and further relief as this Court deems just and proper.

Dated at Portland, Maine this 18th day of January, 1982.

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81-322-001